

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

This amendment allows the Department to recover Medicaid expenditures when liability for negligence (malpractice) is admitted or established. Iowa has been one of the few states that do not have this capability. These collections are now authorized by statutory changes enacted in 2011 Iowa Acts, House File 649. This change was one of the cost containment strategies recommended by Governor Branstad.

This amendment was Adopted and Filed Emergency and was published in the Iowa Administrative Bulletin on September 7, 2011, as **ARC 9696B**. Notice of Intended Action to solicit comment on the amendments was published as **ARC 9697B** on the same date. The Department received no comments on the Notice of Intended Action. The item has been changed to rescind the amendment that was previously Adopted and Filed Emergency and to adopt new language in lieu thereof. However, the new language is identical to that Adopted and Filed Emergency.

The Council on Human Services adopted this amendment on November 9, 2011.

This amendment does not provide for waivers in specified situations because the savings assumed in the Department’s appropriations will not be achieved if waivers are provided. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

This amendment will become effective January 4, 2012, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Rescind subrule 75.4(1) and adopt the following new subrule in lieu thereof:

**75.4(1)** When the medical assistance program pays for a member’s medical care or expenses, the department shall have a lien upon all monetary claims which the member may have against third parties for those expenses. Monetary claims shall include medical malpractice claims for injuries sustained on or after July 1, 2011. The lien shall be to the extent of the medical assistance payments only.

*a.* A lien is not effective unless the department files a notice of lien with the clerk of the district court in the county where the member resides and with the member’s attorney when the member’s eligibility for medical assistance is established. The notice of lien shall be filed before the third party has concluded a final settlement with the member, the member’s attorney, or other representative.

*b.* The third party shall obtain a written determination from the department concerning the amount of the lien before a settlement is deemed final.

(1) A compromise, including, but not limited to, notification, settlement, waiver or release of a claim, does not defeat the department’s lien except pursuant to the written agreement of the director or the director’s designee under which the department would receive less than full reimbursement of the amounts it expended.

(2) A settlement, award, or judgment structured in any manner not to include medical expenses or an action brought by a member or on behalf of a member which fails to state a claim for recovery of medical expenses does not defeat the department’s lien if there is any recovery on the member’s claim.

*c.* All notifications to the department required by law shall be directed to the Iowa Medicaid Enterprise, Revenue Collection Unit, P.O. Box 36475, Des Moines, Iowa 50315. Notification shall be

considered made as of the time the notification is deposited so addressed, postage prepaid, in the United States Postal Service system.

[Filed 11/9/11, effective 1/4/12]

[Published 11/30/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/30/11.